IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8473 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD KAISER I HIND CO LTD

Versus

KRISHNAKUMAR NAIR

Appearance:

Mr.Shukla, Advocate, of NANAVATI & NANAVATI,
for the Petitioner.

Mr.Krishnakumar Nair, Respondent, party-in-person.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/12/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner-Company has challenged the order passed by the Labour Court, Ahmedabad dated 13.3.2000, passed in Recovery Application No.971 of 1994 and Recovery Application No.1676 of 1993.

By the impugned order, the Labour Court partly allowed the recovery application and it is ordered that the respondent-workman is entitled to Rs.4,500/- by way of arrears of bonus amount as well as Rs.2,74,732.17 Ps., which he is entitled towards his legal dues for the period between 1976 and March, 1993.

2. The respondent herein preferred aforesaid two recovery applications before the Labour Court by resorting to Section 33C(2) of the Industrial Disputes Act.

So far as Recovery Application No.971 of 1994 is concerned, it is the case of the respondent-applicant that he had joined the Mill Company with effect from 9.8.1966 in the Felt Calender Department, on the post of Supervisor. Subsequently, he gave resignation, but the Company had not paid him bonus amount, which was paid to other employees. By the said application, it is prayed that he is entitled to bonus amount of Rs.4,500/- for the period between 1992-1993. The respondent also preferred another application, being Recovery Application No.1676 of 1993, by which it is prayed that he was paid certain allowances as well as dearness allowance, over and above his basic salary.

It is his case that as per the Award given in the dispute between the Mill Company and representative Union, the respondent is entitled to D.A. and other emoluments over and above his basic pay, and the Company, abruptly, with effect from February, 1976, without his consent, started paying him consolidated salary and stopped payment of high cost allowance, variable D.A. and other benefits. It is averred in the application that the company had illegally and arbitrarily started paying consolidated salary to the petitioner and that as per the Award of 1978, all Technicians and Officers are entitled to Rs.850/- towards variable D.A., which is required to be paid to all Technicians and Officers. By the said application, the respondent-workman prayed for an amount of Rs.2,74,732.17 Ps., which, according to him, he is entitled to, towards variable D.A., high cost allowance, and other benefits. Both the said applications were heard together by the Labour Court.

3. On behalf of the petitioner-Management, both the applications were resisted, by filing a detailed reply. According to the petitioner-Management, the respondent is not a 'workman', as per the provisions of the Industrial Disputes Act. The said applications were also resisted on the ground that consolidated salary was paid to the

respondent and the same was within his knowledge and, in fact, higher salary, including all allowances, etc., was given. The respondent, having accepted the same, never tried to challenge the said action and, in fact, he accepted the higher salary, which was given by way of consolidated salary to him.

On the above and such other grounds, the applications were resisted by the petitioner.

4. The Labour court, by the impugned order, partly allowed the said application, by holding that the respondent is entitled to Rs.4,500/- for bonus for the period, as stated earlier, and Rs.2,74,732.17 Ps., towards his legitimate dues, which were not paid to him, which is in connection with high cost allowance, variable D.A. and other benefits.

5. On behalf of the petitioner, it is argued that the consolidated salary was paid to the respondent in lieu of all other allowances and the same was paid at the higher rate, which was accepted by the respondent, without any protest. On behalf of the petitioner, Mr.Shukla further submitted that the respondent, who was working as a Supervisor, cannot be treated as a 'workman', under the provisions of the Act. He submitted that since there is no pre-existing right in favour of the respondent, the recovery applications are required to be rejected. He also submitted that after considerable delay, the respondent had approached the Labour Court by way of recovery applications and in view of the delay, both these applications are required to be rejected.

Mr.Shukla also submitted that by paying him consolidated salary, better conditions were offered and the said conditions were accepted by the respondent.

On the aforesaid premises, it is submitted that the petition is required to be allowed and the order passed by the Labour Court in the aforesaid recovery proceedings is required to be quashed and set aside.

6. Mr.Shukla, in order to substantiate his say that there is no pre-existing right in favour of the respondent, as well as on the point of delay, has relied upon certain judgments of the Apex Court.

The respondent, who is appearing as party-in-person, however, submitted that delay itself is no ground for denying the benefit, which he is entitled to, towards monetary claim. the party-in-person also

further argued that as per the award rendered between the Management and the representative Union, the respondent is entitled to get the benefit of high cost allowance, variable D.A., etc. It is also argued by the party-in-person that when the respondent is entitled to the aforesaid benefits, it is not necessary that he is required to raise any separate Industrial Dispute and such type of claim can always be adjudicated by the Labour Court under Section 33C(2) of the Industrial Disputes Act.

7. I have heard both the sides, at length.

The respondent herein has mainly relied upon the Award in the dispute between the Mill-Company and the representative Union, which is in connection with Technicians. The said Award, as such, is not forming part of the proceedings.

Mr.Shukla, for the petitioner, submitted that the Management, unfortunately, has not led any evidence and he prayed that opportunity may be given to the petitioner to lead documentary evidence. Mr.Shukla has also tried to read the evidence adduced by the respondent before the Labour Court and by reading his evidence, Mr.Shukla tried to point out that he cannot be branded as a 'workman', as, he was doing purely supervisory work.

It is argued by Mr.Shukla that the consolidated amount is much more than what the respondent was getting at the relevant time towards basic pay and other allowances and since it is argued by the other side that the Award given in the matter of the Mill-Company and the representative Union is not forming part of the record and the Management, unfortunately, could not lead evidence, opportunity to lead evidence may be given to the petitioner-Management, so that necessary documents can be produced on both the counts, i.e., regarding consolidated salary, which, according to him, is more beneficial, as well as on the point whether the respondent was a 'workman' or not, or was doing any technical type of duty. In my view, therefore, the matter is required to be sent back to the Labour Court for giving the petitioner a last opportunity to lead whatever evidence it wants to lead before the Labour Court. There is one more reason for sending the matter back to the Labour Court. The Award in question, on which heavy reliance is placed by the respondent, is not produced on record. The respondent argued that he has submitted a copy of the Award before the Labour Court, and, Mr.Shukla, on the other hand, argued that the said

Award, as such, is not forming part of the record.

8. Under the circumstances, the matter is required to be sent back to the Labour Court for reconsidering the matter after allowing the petitioner to lead appropriate evidence. If the respondent wants to adduce any additional evidence, he is also permitted to produce the same before the Labour Court. So far as the question about pre-existing right is concerned, it cannot be said that the respondent has no pre-existing right, ultimately, if he is able to prove his case, on merits. At the relevant time, while he was in service, if he was denied any benefit, it is not necessary that he is required to raise appropriate Industrial Dispute.

9. The matter is accordingly sent back to the Labour Court, with a direction that the Labour Court may allow the petitioner as well as the respondent to lead appropriate evidence in connection with the recovery applications and, after considering the necessary documents as well as after considering the Award given between the Mill-Company and the representative Union, the Labour Court shall pass appropriate order, in accordance with law. The Labour Court shall also decide the question about delay in filing the applications, the question whether the respondent can be said to be a 'workman' as well as whether he is entitled to the amount, as prayed for in the recovery application. All these questions are kept open and the Labour Court shall decide the question again, after considering the evidence on record, both oral and documentary.

10. The respondent submitted that he has given an amendment application in Recovery Application No.1676 of 1993, by which he wanted to amend the original application, by putting forward additional claim. If any amendment application is given by the respondent and if the same is granted, but could not be carried out in the original application, the same also may be taken into consideration and if there is any additional claim, the same also may be adjudicated along with the present proceedings on its own merits. It is clarified that the Labour Court may allow the respondent to carry out the amendment in the original application and the original claim also may be adjudicated, along with the present recovery application, on its own merits. It is clarified that all these questions are kept open and it is for the Labour Court again to adjudicate the same, in accordance with law, after considering the evidence on record, both documentary as well as oral.

Since the Management has not led appropriate evidence at the relevant time, the petitioner is directed to pay costs of Rs.5,000/- and Mr.Shukla submitted that the same will be paid to the respondent within a period of one week from today. On behalf of the petitioner, Mr.K.D. Patel, Factory Manager, is present and it is submitted by him that as and when the respondent approaches the petitioner for the purpose of recovering the said costs, it will be paid to him, immediately.

11. The petition is accordingly allowed. The impugned order of the Labour Court in Recovery Application Nos. 1676 of 1993 and 971 of 1994 is quashed and set aside. Rule is made absolute accordingly, with costs of Rs.5,000/- to be paid by the petitioner to the respondent.

It is once again pointed out that the matter is sent back for fresh adjudication and, after hearing the parties, the Labour Court shall pass appropriate order. The Labour Court is directed to take appropriate fresh decision within a period of one month from the date of receipt of the writ from this Court and Mr.Shukla has stated that the petitioner will not ask for any adjournment so that the matter can be heard within the stipulated time.

6th December, 2003 (P.B. Majmudar, J.)

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(apj)